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**ICLR Special Issue –
The UN Drug Control Treaties: Contemporary Challenges and Reform**

EDITORIAL

David Bewley-Taylor

Professor of International Relations and Public Policy, Department of Political and Cultural Studies, Director of Global Drug Policy Observatory, Swansea University, UK

Rick Lines

Associate Professor of Criminology and Human Rights, Hillary Rodham Clinton School of Law, Senior Research Associate of Global Drug Policy Observatory, Swansea University, UK

In February 1909, thirteen States met in Shanghai for a commission of inquiry into ‘the opium question’. These thirteen governments - USA, Austria-Hungary, China, France, Germany, United Kingdom, Italy, Japan, Netherlands, Persia, Portugal, Russia and Siam – represented not only the major colonial powers of the era, but also the countries that were the major consumers and producers of opium. The report produced by this meeting contained a series of recommendations that three years later would form the core obligations of the International Opium Convention in 1912, the first multilateral treaty on drug control. Thus begins the international community’s relationship with drug control, a relationship that would evolve over time to include numerous additional treaties and to address other types of drugs, including cannabis.

In the United Nations period, the mission to control drugs has resulted in the establishment of a major political body – the UN Commission on Narcotic Drugs - the adoption of more than one hundred resolutions of the General Assembly and the drafting and ratification of three major international conventions. Yet despite this century old body of international law, and the widespread and substantive impact of international drug control treaties on domestic law and policy, it has rarely been a focus for legal scholars. Despite their near universal ratification by Member States, discussion of the UN drug treaties is almost completely absent from the leading textbooks on public international law. The number of scholarly monographs on international drug control law published over the past fifty years can be counted on the fingers of one hand.

However, in recent years, drug control has begun to emerge as a subject of wider interest, a process that has developed alongside, if not being driven by, the increased recognition of the global harms that regime has driven. Growing attention to human rights violations and environmental damage driven by drug enforcement, as well as moves by a number of countries to explore legally regulated markets in recreational cannabis, have increased the interest in drug control as an important subject for scrutiny and reform. These developments have raised new legal and policy questions, both domestically and internationally, that have challenged Member States, scholars and activists to expand their understanding of drug control law, to consider how a new international order on drugs might evolve and what it might look like if achieved.

Inspired predominantly by policy shifts towards legally regulated cannabis markets in what is currently still a small number of jurisdictions, this Special Issue of *International Community Law Review* makes a contribution to this growing body of literature, and to the scholarship on these core challenges. The Issue has its origins in ‘Cannabis Regulation and the UN Drug Control Treaties’, an Expert Seminar organized by the Transnational Institute (TNI), the Global Drug Policy Observatory, Swansea University (GDPO) and the Washington Office on Latin America (WOLA), held in Amsterdam 26th - 28th October 2017.

Despite the fact that international drug control law is over one hundred years old, the core objectives and structures have changed little over that time, leading to concerns that the regime has not evolved in keeping with modern evidence on drugs, health, crime and related issues. ‘The Evolution and Modernisation of Treaty Regimes: The Contrasting Cases of International Drug Control and Environmental Regulation’ by David Bewley-Taylor and Malgosia Fitzmaurice examines this inertia in the context of approaches found within the regime for environmental regulation and its underpinning Multilateral Environmental Agreements (MEAs). The authors argue that much can be learned from MEAs and their approach the regime evolution, particularly in relation to governance structures and the use of Conferences of the Parties.

In ‘Cannabis reform, ‘medical and scientific purposes’ and the Vienna Convention on the Law of Treaties’, Rick Lines and Damon Barrett explore the often-contested question of treaty interpretation, in particular the suggestion found in some recent literature that a legally regulated market in recreational cannabis could be made treaty compliant if labelled as a ‘scientific experiment’. Using Articles 31 and 32 of the Vienna Convention, the authors probe the shortcomings of this interpretation, arguing that a rigorous approach to questions of interpretation is essential in order to advance broader drug policy reforms.

Two of the articles address the potential strategies for pursuing domestic drug reform via *inter se* agreements between States using article 41 of the Vienna Convention on the Law of Treaties.

‘Inter se modification of the UN drug control conventions’ by Martin Jelsma and Neil Boister proposes that such an approach would provide a useful safety valve for collective action to adjust a treaty regime arguably frozen in time. *Inter se* modification requires that an agreement to derogate from certain cannabis treaty provisions include a clear commitment to the original treaty aim to promote the health and welfare of humankind and to the original treaty obligations vis-à-vis States not party to the agreement. However, the authors conclude that such a response would have benefits when compared against an alternative chaotic scenario of multiple unilateral reservations and questionable re-interpretations.

Continuing on this topic, ‘Regulated legalization of cannabis through positive human rights obligations and *inter se* treaty modification’ by Piet Hein van Kempen and Masha Fedorova explores the positive obligations found in human rights law that require States to take measures in order to offer the best protection of human rights. The authors then explore the potential for States to use modifications *inter se* on cannabis to better realise the right to health under legally regulated frameworks.

It is our hope that these contributions will not only help bring international drug policy to the attention of legal scholars and assist in the generation nuanced analysis that reaches beyond its

traditional focus, but also be of use to policy makers and practitioners during a time of unprecedented flux and challenge.